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Return Date & Time:  
FEBRUARY 25, 2019 9:00 AM

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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IN RE:

KELVIN D. PAYTON,

Debtor

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Chapter 13 Case No: 118-46141-ESS

NOTICE OF MOTION

PLEASE TAKE NOTICE, that upon the within application, the Chapter 13 Trustee will move this court before the Honorable Elizabeth S. Stong, U.S. Bankruptcy Judge, at the United States Bankruptcy Court, 271 Cadman Plaza East, Brooklyn, New York, Courtroom 3585 on FEBRUARY 25, 2019 at 9:00 AM, or as soon thereafter as counsel can be heard, for an Order pursuant to 11 U.S.C. Section 1307(c) for cause, dismissing this Chapter 13 case and for such other and further relief as may seem just and proper.

Responsive papers shall be filed with the Bankruptcy Court and served upon the Chapter 13 Trustee, Marianne DeRosa, Esq., no later than seven (7) business days prior to the hearing date set forth above. Any responsive papers shall be in conformity with the Federal Rules of Civil Procedure and indicate the entity submitting the response, the nature of the response and the basis of the response.

Date: Jericho, New York  
February 8, 2019

/s/ Marianne DeRosa  
MARIANNE DeROSA, TRUSTEE  
125 JERICHO TPKE, SUITE 105  
JERICHO, NEW YORK 11753  
(516) 622-1340

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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FEBRUARY 25, 2019  
9:00 AM

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IN RE:

Chapter 13 118-46141-ESS

KELVIN D. PAYTON,

APPLICATION

Debtor.

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TO THE HONORABLE ELIZABETH S. STONG, U.S. BANKRUPTCY JUDGE:

Marianne DeRosa, Chapter 13 Trustee in the above-captioned estate, respectfully represents the following:

1. The Debtor filed a petition under the provisions of 11 U.S.C. Chapter 13 on October 25, 2018, and, thereafter, Marianne DeRosa was duly appointed and qualified as Trustee.

2. The Debtor's proposed Chapter 13 Plan, (hereinafter "The Plan"), dated and filed with the Court on November 8, 2018, and reflected in the Court's docket as number 15 provides for a monthly Plan payment of \$100.00 per month for a period of 60 months, along with the proposed monthly mortgage payment of \$3,217.95 per month while loss mitigation is pending. Additionally, The Plan provides for full repayment to all filed secured and priority proofs of claim, as well as a pro rata distribution to general unsecured proofs of claim.

3. As of the date of this motion, the Debtor has failed to:

- a. provide the Trustee with a copy of an affidavit by the Debtor stating the Debtor has paid all amounts that are required to be paid under a domestic support obligation or that the Debtor has no domestic support obligations as required by E.D.N.Y. LBR 2003-1(b)(ii)(A) and (B);
- b. provide the Trustee with a copy of affidavit from the Debtor stating whether the Debtor has filed all applicable federal, state and local tax returns under the Bankruptcy Code Section 1308 as required by E.D.N.Y. LBR 2003-1(b)(iii);
- c. file the original affidavits with the Court as required under subdivisions (b)(ii) and (iii) as required by E.D.N.Y. LBR 2003-1(c).
- d. provide the Trustee with a copy of a federal income tax return or transcript for the most recent year 7 days before the first meeting of creditors pursuant to 11 U.S.C. § 521(e)(2)(A)(i)
- e. commence making Chapter 13 plan payments to the Trustee as required by 11 U.S.C. § 1326(a)(1), and is \$9,953.85 in arrears through and including January 2019.

4. The Plan cannot be confirmed and as a result a delay has occurred that is prejudicial to the rights of creditors. The case must be dismissed under 11 U.S.C. § 1307(c)(1) and (c)(5).

5. Each of the foregoing constitutes cause to dismiss this Chapter 13 case within meaning of 11 U.S.C. §1307(c).

WHEREFORE, the Chapter 13 Trustee respectfully requests that this Court enter an Order denying confirmation and dismissing this Chapter 13 case and such other and further relief as may seem just and proper.

Dated: Jericho, New York  
February 8, 2019

/s/ Marianne DeRosa  
Marianne DeRosa, Trustee

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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Chapter 13 Case No: 118-46141-ESS

IN RE:

KELVIN D. PAYTON,

CERTIFICATE OF SERVICE  
BY MAIL

Debtor.

-----X

This is to certify that I, DANI M. BOYER, have this day served a true, accurate and correct copy of the within Notice of Motion and Application by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

KELVIN D. PAYTON  
114-16 173rd STREET  
JAMAICA, NY 11434

NORMA E. ORTIZ, ESQ.  
32-72 STEINWAY STREET, STE 402  
ASTORIA, NY 11103

WELLS FARGO BANK, NA  
C/O WOODS, OVIATT, GILMAN, LLP  
700 CROSSROADS BLDG  
TWO STATE STREET  
ROCHESTER, NY 14614

This February 8, 2019

/s/DANI M. BOYER  
DANI M. BOYER, Paralegal  
Office of the Standing Chapter 13 Trustee  
Marianne DeRosa, Esq.  
125 Jericho Tpke, Suite 105  
Jericho, New York 11753  
(516) 622-1340

Index No: 118-46141-ESS  
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NOTICE OF MOTION, APPLICATION  
and  
CERTIFICATE OF SERVICE

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MARIANNE DeROSA, TRUSTEE  
125 JERICO TPKE, SUITE 105  
JERICO, NEW YORK 11753  
(516) 622-1340

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